

UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

CLAIRE JALBERT,

Plaintiff

v.

Docket No. 02-36-P-C

RELIANCE STANDARD

LIFE INSURANCE COMPANY,

Defendant

***RECOMMENDED DECISION ON DEFENDANT’S
MOTION TO DISMISS***

Defendant Reliance Standard Life Insurance Company (“Reliance”) moves pursuant to Fed. R. Civ. P. 12(b)(6) to dismiss Counts I, II and IV of plaintiff Claire Jalbert’s complaint, and to strike her demand for a jury trial, on the ground that those counts are preempted by the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1001 *et seq.*, which makes no provision for jury trials. *See generally* Defendant’s Motion To Dismiss Counts I, II and IV and Strike Plaintiff’s Jury Demand (“Motion”) (Docket No. 4). Jalbert concedes that Count IV (alleging negligent infliction of emotional distress) is preempted. Plaintiff’s Opposition to Defendant’s Motion To Dismiss Counts 1, 2 and 4 of the Complaint (“Opposition”) (Docket No. 6) at 1. For the reasons that follow, I find that Counts I and II likewise are preempted and recommend that the Motion be granted.

I. Applicable Legal Standards

“When evaluating a motion to dismiss under Rule 12(b)(6), [the court] take[s] the well-pleaded facts as they appear in the complaint, extending [the] plaintiff every reasonable inference in his favor.” *Pihl v. Massachusetts Dep’t of Educ.*, 9 F.3d 184, 187 (1st Cir. 1993). The defendant is entitled to dismissal for failure to state a claim only if “it appears to a certainty that the plaintiff would be unable to recover under any set of facts.” *Roma Constr. Co. v. aRusso*, 96 F.3d 566, 569 (1st Cir. 1996); *see also Jackson v. Faber*, 834 F. Supp. 471, 473 (D. Me. 1993).

II. Factual Context

For purposes of this Motion I accept the following as true.

At all pertinent times, Jalbert was the beneficiary of two policies of insurance issued by Reliance – a disability insurance policy and a life insurance policy. Complaint, attached to Notice of Filing Petition for Removal (Docket No. 1), ¶ 3. Jalbert’s disability insurance policy provided that, in the event she became disabled, she would receive payments until she turned age 65. *Id.* ¶ 4.

In or about May 1998 Jalbert notified Reliance that she was unable to work and sought benefits pursuant to the disability policy. *Id.* ¶ 5. After reviewing Jalbert’s claim, Reliance began paying her benefits pursuant to that policy (in the amount of \$251.34 per month as of November 1998). *Id.* ¶¶ 6-7. Concurrently, Reliance honored the “waiver of premium” provision in Jalbert’s life insurance policy, waiving premium payments during her period of disability. *Id.* ¶ 8. At all relevant times, Jalbert kept Reliance apprised of her medical condition, complying with all of its requests regarding the same. *Id.* ¶ 9.

On or about November 20, 2000 Reliance unilaterally, and without notice to Jalbert, terminated her disability insurance benefits. *Id.* ¶ 11. However, Reliance did not then terminate her waiver-of-premium benefit. *Id.* ¶ 12. Jalbert pointed out to Reliance, during a review of the waiver-of-premium benefit in the spring of 2001, that her disability benefits had been discontinued the

previous November. *Id.* ¶ 13. Reliance nonetheless continued to waive Jalbert’s life insurance premium payments until on or about July 24, 2001, when it unilaterally, and without notice to Jalbert, terminated that benefit. *Id.* ¶¶ 14-15.

Although Jalbert, by letter dated September 5, 2001, appealed Reliance’s decision regarding the waiver-of-premium benefit, Reliance ignored that appeal and never responded to it. *Id.* ¶ 16. Reliance denied Jalbert’s appeals of its decision to terminate her disability policy benefits. *Id.* ¶ 17. Jalbert could not afford to pay the premiums for her life insurance policy, which lapsed for non-payment. *Id.* ¶ 18. Reliance’s contracts with Jalbert were of a nature that their breach in the manner described above was peculiarly likely to result in severe emotional distress. *Id.* ¶ 19.

III. Analysis

Jalbert sues Reliance in Count I of her complaint for breach of contract, seeking damages of approximately \$31,000 in disability insurance policy benefits (*i.e.*, payments of \$251.34 per month until she reaches age 65), damages for emotional distress and an injunction compelling Reliance to reinstate her life insurance policy. *Id.* ¶¶ 21-24. In Count II, Jalbert asserts that Reliance engaged in unfair claims settlement practices in violation of the Maine Insurance Code as codified at 24-A M.R.S.A. § 2436-A(1) – namely, misrepresentation of the terms of her policy coverage and failure within a reasonable time to acknowledge or review her claims. *Id.* ¶¶ 25-27. Count III sets forth a claim pursuant to ERISA, 29 U.S.C. § 1132(a)(1)(B), to recover benefits due Jalbert under the terms of both Reliance policies. *Id.* ¶¶ 28-30.

In this case, there is no dispute that ERISA governs the terms of the policies in question or that the causes of action set forth in Counts I and II “relate to” an employee benefit plan in the sense contemplated by ERISA’s preemption provision, 29 U.S.C. § 1144(a).¹ Instead, Jalbert contends that

¹ This subsection provides, *inter alia*: “Except as provided in subsection (b) of this section, the provisions of this subchapter and (continued...) ”

these causes of action are spared from preemption by ERISA's so-called "savings clause," 29 U.S.C. § 1144(b)(2)(A), inasmuch as they constitute state laws regulating the business of insurance.² See generally *Opposition*. Jalbert relies heavily on *UNUM Life Ins. Co. of Am. v. Ward*, 526 U.S. 358 (1999), in which the Supreme Court held a California "notice-prejudice rule" preserved. See generally *id.*

Ward is distinguishable in at least one critical respect. The California notice-prejudice rule did not constitute a competing enforcement mechanism in conflict with ERISA's exclusive set of remedies, see *Ward*, 526 U.S. at 376-77 & n.7, whereas Jalbert's causes of action do. Jalbert's claims are governed not by *Ward*, but by *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41 (1987), in which the Supreme Court held:

. . . Because in this case, the state cause of action seeks remedies for the improper processing of a claim for benefits under an ERISA-regulated plan, our understanding of the saving clause must be informed by the legislative intent concerning the civil enforcement provisions provided by ERISA § 502(a), 29 U.S.C. § 1132(a).

The Solicitor General, for the United States as *amicus curiae*, argues that Congress clearly expressed an intent that the civil enforcement provisions of ERISA § 502(a) be the exclusive vehicle for actions by ERISA-plan participants and beneficiaries asserting improper processing of a claim for benefits, and that varying state causes of action for claims within the scope of § 502(a) would pose an obstacle to the purposes and objectives of Congress. We agree.

Pilot Life, 481 U.S. at 51-52 (citation omitted).³

Moreover, the Court in *Pilot Life* rejected the argument that, for purposes of ERISA savings-clause analysis, a Mississippi common-law cause of action proscribing bad faith insurance practices

subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title." 29 U.S.C. § 1144(a).

² The "savings clause" provides: "Except as provided in subparagraph (B) [which is not in issue here], nothing in this subchapter shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities." 29 U.S.C. § 1144(b)(2)(A).

³ To the extent that Jalbert contends that her contract claim should be preserved in part because it contains remedies different from those provided by ERISA, see *Opposition* at 2-3, her argument actually cuts in favor of a finding of preemption.

substantively “regulate[d] insurance,” noting, *inter alia*, “Even though the Mississippi Supreme Court has identified its law of bad faith with the insurance industry, the roots of this law are firmly planted in the general principles of Mississippi tort and contract law. Any breach of contract, and not merely breach of an insurance contract, may lead to liability for punitive damages under Mississippi law.” *Pilot Life*, 481 U.S. at 50. This logic plainly applies to (and forecloses) Jalbert’s claim for breach of contract, and has been held to foreclose claims premised on state statutes that, like 24-A M.R.S.A. § 2436-A(1), codify principles of insurance bad faith or unfair claims settlement practices. *See, e.g., Tri-State Mach., Inc. v. Nationwide Life Ins. Co.*, 33 F.3d 309, 314-15 (4th Cir. 1994) (Unfair Trade Practices Act contained within West Virginia’s insurance code did not substantively regulate business of insurance for purposes of ERISA’s savings clause).

In the wake of *Pilot Life*, courts have had little difficulty holding causes of action similar to those asserted in Counts I and II of Jalbert’s complaint preempted by ERISA. *See, e.g., Hampers v. W.R. Grace & Co.*, 202 F.3d 44, 51-53 & n.10, 54 (1st Cir. 2000) (breach of contract); *Bast v. Prudential Ins. Co. of Am.*, 150 F.3d 1003, 1006-08 (9th Cir. 1998) (breach of contract; asserted violation of Washington Insurance Code provision imposing duty to act in good faith); *Tri-State Machine*, 33 F.3d at 311, 314-15 (breach of contract; asserted violation of West Virginia statute delineating unfair trade practices in business of insurance); *Kanne v. Connecticut Gen. Life Ins. Co.*, 867 F.2d 489, 491, 493-94 (9th Cir. 1989) (asserted violation of California Insurance Code provision addressing failure to pay claims reasonably promptly); *Brandner v. UNUM Life Ins. Co. of Am.*, 152 F. Supp.2d 1219, 1221, 1225-28 (D. Nev. 2001) (breach of contract; asserted violation of Nevada statute regulating unfair insurance practices). I recommend that the court likewise find Counts I and II preempted in this case.

Should the court accept this recommendation, leaving only Jalbert's ERISA claim (Count III) intact, her demand for a jury trial properly is stricken. *See, e.g., Hampers*, 202 F.3d at 54 (inasmuch as plaintiff's state-law contract claim preempted by ERISA, court did not err in denying his demand for jury trial).

IV. Conclusion

For the foregoing reasons, I recommend that Reliance's motion to dismiss be **GRANTED**.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated this 6th day of March, 2002.

David M. Cohen
United States Magistrate Judge

STNDRD

U.S. District Court
District of Maine (Portland)

CIVIL DOCKET FOR CASE #: 02-CV-36

JALBERT v. RELIANCE STANDARD

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Jurisdiction: Federal Question

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Cause: 28:1441 Notice of Removal

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